



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2018–0010; 4500030113]

RIN 1018–BD06

Endangered and Threatened Wildlife and Plants; Section 4(d) Rule for Louisiana

Pinesnake

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose a rule under section 4(d) of the Endangered Species Act for the Louisiana pinesnake (*Pituophis ruthveni*), a reptile from Louisiana and Texas. This rule would provide measures to protect the species.

DATES: We will accept comments received or postmarked on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

Comments submitted electronically using the Federal eRulemaking Portal (see

ADDRESSES, below) must be received by 11:59 p.m. Eastern Time on the closing date.

We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may submit comments by one of the following methods:

- (1) *Electronically:* Go to the Federal eRulemaking Portal:

<http://www.regulations.gov>. In the Search box, enter FWS–R4–ES–2018–0010, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on “Comment Now!”

(2) *By hard copy*: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2018–0010, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see **Information Requested**, below, for more information).

FOR FURTHER INFORMATION CONTACT: Joseph Ranson, Field Supervisor, U.S. Fish and Wildlife Service, Louisiana Ecological Services Office, 646 Cajundome Blvd., Suite 400, Lafayette, LA; telephone 337–291–3113. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Previous Federal Actions

On October 6, 2016, the Service, under the authority of the Endangered Species Act, as amended (“Act”; 16 U.S.C. 1531 et seq.), published in the *Federal Register* a proposed rule to add the Louisiana pinesnake (*Pituophis ruthveni*), a reptile from Louisiana and Texas, as a threatened species to the List of Endangered and Threatened

Wildlife (81 FR 69454). The List of Endangered and Threatened Wildlife is in title 50 of the Code of Federal Regulations in part 17 (50 CFR 17.11(h)). The proposed listing rule had a 60-day comment period, ending on December 5, 2016. Then, on October 6, 2017, the Service published in the *Federal Register* a document that reopened the comment period on the proposed rule and announced that we were extending by 6 months the 1-year period for making a final determination on the proposed rule to list the Louisiana pinesnake as a threatened species (82 FR 46748). In accordance with section 4(b)(6)(A)(i)(III) of the Act, this extension was based on our finding that there was substantial disagreement regarding available information related to the interpretation of the available survey data used to determine the Louisiana pinesnake's status and trends. The second comment period closed November 6, 2017. No public hearing was requested or held in response to publication of these documents.

Elsewhere in this issue of the *Federal Register*, we publish a final rule for the 2016 proposed listing rule for the Louisiana pinesnake as a threatened species. For a complete list of previous Federal actions related to this species as well as information on its taxonomy, habitat, life history, historical and current distribution, population estimates and status, and a summary of factors affecting the species, see that proposed rule (81 FR 69454, October 6, 2016).

Background

The primary habitat feature that contributes to the conservation of the Louisiana pinesnake is open-canopy forest situated on well-drained sandy soils with an abundant herbaceous plant community that provides forage for the Baird's pocket gopher (*Geomys*

breviceps), which is the snake's primary known source of food. In addition, Baird's pocket gopher burrows are the primary known source of shelter for the Louisiana pinesnake. As discussed in the, proposed listing rule, one of the primary threats to the Louisiana pinesnake is the continuing loss and degradation of the open pine forest habitat that supports the Baird's pocket gopher. In the types of sandy soil in which the Louisiana pinesnake and pocket gopher are found (Wagner et al. 2014, p. 152 ; Duran 2010, p. 11; Davis et al. 1938, p. 414), the pocket gopher creates burrows at an average depth of about 18 centimeters (cm) (7 inches (in)) (Wagner et al. 2015, p. 54).

One of the primary features of suitable pocket gopher habitat is a diverse herbaceous (non-woody) plant community with an adequate amount of forbs (non-grass herbaceous vegetation) that provide forage for the pocket gopher. Louisiana pinesnakes and pocket gophers are known to be highly associated (Ealy et al. 2004, p. 389) and occur together in areas with herbaceous vegetation, a nonexistent or sparse midstory, and a low pine basal area (Rudolph and Burgdorf 1997, p. 117; Himes et al. 2006, pp. 110, 112; Wagner et al. 2017, p. 22). In a study of pocket gophers in a Louisiana forest system managed according to guidelines for red-cockaded woodpecker (*Picoides borealis*) habitat, it was shown that pocket gopher selection of habitat increased with increasing forb cover and decreased with increasing midstory stem density and midstory pine basal area (Wagner et al. 2017, p. 11). Few (less than 25 percent) sites used by pocket gophers had less than 18 percent coverage by forbs alone (Wagner et al. 2017, p. 22). Use by pocket gophers is also inhibited by increased midstory stem density and midstory pine basal area even when herbaceous vegetation is present (Wagner et al. 2017, pp. 20, 22, 25). Pocket gophers used areas with higher densities of trees much less frequently than

areas with fewer stems, presumably because of greater root mass, which reduces burrowing efficiency (Wagner et al. 2017, pp. 11, 22).

One of the main causes of the degradation of this habitat is the decline in or absence of fire. Fire was the primary source of historical disturbance and maintenance, and prescribed fire is currently known to reduce midstory and understory hardwoods and promote abundant herbaceous groundcover in the natural communities of the longleaf dominant pine ecosystem where the Louisiana pinesnake most often occurs. In the absence of regularly recurring, unsuppressed fires, open pine forest habitat requires active management activities essentially the same as those required to produce and maintain red-cockaded woodpecker foraging habitat. Those activities, such as thinning, prescribed burning, reforestation and afforestation, midstory woody vegetation control, herbaceous vegetation (especially forbs) enhancement, and harvest (particularly in stands that require substantial improvement) are necessary to maintain or restore forests to the conditions that are suitable (as described in the preceding paragraph) for pocket gophers and Louisiana pinesnakes.

Establishment and management of open pine forests beneficial to the Louisiana pinesnake has been occurring on some privately owned land in Louisiana and Texas. Additionally, throughout the range of the Louisiana pinesnake, Federal and State agencies have developed conservation efforts, which have provided a conservation benefit to the species. Increased efforts, however, are necessary on both public and private lands to address continued habitat loss, degradation, and fragmentation, one of the species' primary threats across its entire range, and it is the intent of this proposed rule to encourage these increased efforts.

In the proposed listing rule (81 FR 69454, October 6, 2016), we solicited public comments as to which prohibitions, and exceptions to those prohibitions, are necessary and advisable to provide for the conservation of the Louisiana pinesnake. During the public comment periods on the proposed listing rule (81 FR 69454, October 6, 2016; 82 FR 46748, October 6, 2017), we received comments expressing concern that, when the species is listed under the Act, certain beneficial forest management activities on private land could be considered takings in violation of section 9(a)(1) of the Act or its implementing regulations, and would thus be regulated.

The Service intends to strongly encourage the continuation and increased implementation of forest management activities – thinning, prescribed fire, and mid- and understory woody vegetation control in particular - that promote open canopy forest and herbaceous vegetation growth, which are beneficial to the Louisiana pinesnake. In recognition of efforts that provide for conservation and management of the Louisiana pinesnake and its habitat in a manner consistent with the purposes of the Act, as discussed in more detail below, we are now proposing a rule under section 4(d) of the Act that identifies situations in which take resulting from actions that provide for conservation and management of the Louisiana pinesnake would not be prohibited. Information about section 4(d) of the Act is set forth below in **Provisions of Section 4(d) of the Act**.

Our goal is to strongly encourage continuation and increased implementation of these beneficial practices. Nevertheless, if activities could cause subsurface ground disturbance that can directly harm or kill Louisiana pinesnakes inhabiting pocket gopher burrows, or inhibit the persistence of suitable pocket gopher and Louisiana pinesnake

habitat, as described above, they would be subject to the section 9 take prohibitions in certain occupied habitat areas, specifically areas known as Louisiana pinesnake estimated occupied habitat areas (EOHAs). These areas have been the site of recorded occurrences of Louisiana pinesnakes, and they are considered by the Service to be occupied by the species (see the proposed listing rule). This regulation would also apply to any EOHAs that are identified in the future, because activities in such areas could be detrimental to maintenance and development of suitable habitat conditions critical to this species and are more likely to affect the Louisiana pinesnake directly.

Provisions of Section 4(d) of the Act

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to threatened wildlife. Under section 4(d) of the Act, the Secretary of the Interior has the discretion to issue such regulations as he deems necessary and advisable to provide for the conservation of threatened species. The Secretary also has the discretion to prohibit, by regulation with respect to any threatened species of fish or wildlife, any act prohibited under section 9(a)(1) of the Act. The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.31, make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) threatened wildlife within the United States or on the high seas. In addition, it is unlawful to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell,

deliver, carry, transport, or ship any such wildlife that has been taken illegally. To the extent the section 9(a)(1) prohibitions apply only to endangered species, this proposed rule would apply those same prohibitions to the Louisiana pinesnake with some exceptions.

The regulations implementing the ESA include a provision that generally applies to threatened wildlife the same prohibitions and exceptions that apply to endangered wildlife (50 CFR 17.31(a), 17.32), in accordance with section 4(d) of the Act. For any species, the Service may instead develop a protective regulation that is specific to the conservation needs of that species. Such a regulation would contain all of the protections applicable to that species (50 CFR 17.31(c)); this may include some of the general prohibitions and exceptions under 50 CFR 17.31 and 17.32, but would also include protections that are tailored to the specific conservation needs of the threatened species and may be more or less restrictive than the general provisions at 50 CFR 17.31.

The courts have recognized the extent of the Secretary's discretion to develop prohibitions, as well as exclusions from those prohibitions, that are appropriate for the conservation of a species. For example, the Secretary may decide not to prohibit take, or to put in place only limited take prohibitions. See *Alsea Valley Alliance v. Lautenbacher*, 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council v. National Marine Fisheries Service*, 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002). In addition, as affirmed in *State of Louisiana v. Verity*, 853 F.2d 322 (5th Cir. 1988), the protective regulation for a species need not address all the threats to the species. As noted by Congress when the Act was initially enacted, "once an animal is on the threatened list, the Secretary has an almost infinite number of options available to him

with regard to the permitted activities for those species. He may, for example, permit taking, but not importation of such species,” or he may choose to forbid both taking and importation but allow the transportation of such species, as long as the measures will “serve to conserve, protect, or restore the species concerned in accordance with the purposes of the Act” (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

Proposed 4(d) Rule for the Louisiana Pinesnake

Under this proposed section 4(d) rule, except as noted below, all prohibitions and provisions of 50 CFR 17.31 and 17.32 would apply to the Louisiana pinesnake.

Outside of any known EOHAs, the following management activities would not be subject to the general prohibitions at 50 CFR 17.31:

(1) Forestry activities, including tree thinning, harvest (including clearcutting), planting and replanting pines, as well as other silvicultural practices outlined below, that maintain lands in forest land use and that result in the establishment and maintenance of open pine canopy conditions through time across the landscape.

(2) Prescribed burning, including all firebreak establishment and maintenance actions, as well as actions taken to control wildfires.

(3) Herbicide application that is generally targeted for invasive plant species control and midstory and understory woody vegetation control, but is also used for site preparation when applied in a manner that minimizes long-term impact to noninvasive herbaceous vegetation. These provisions include only herbicide applications conducted in a manner consistent with Federal and applicable State laws, including Environmental Protection Agency label restrictions and herbicide application guidelines as prescribed by

manufacturers.

Although these management activities may result in some minimal level of harm or temporary disturbance to the Louisiana pinesnake, overall, these activities benefit the pinesnake by contributing to conservation and recovery. With adherence to the three limitations described in the preceding paragraph these activities will have a net beneficial effect on the species by encouraging active forest management that creates and maintains the herbaceous plant conditions needed to support the persistence of Baird's pocket gopher populations, which is essential to the long-term viability and conservation of the Louisiana pinesnake. This is a reasonable conclusion and therefore meets the standard for applying endangered-species prohibitions to threatened species under the second sentence of section 4(d) of the Act (16 U.S.C. 1533(d) ("The Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 1538(a)(1) of this title ... with respect to endangered species.")). Moreover, even if the "necessary and advisable" standard in the first sentence of section 4(d) applied to regulations adopting endangered-species prohibitions for a threatened species, we would find that adopting these prohibitions meets that standard.

These provisions are necessary because, absent protections, the species is likely to become in danger of extinction in the foreseeable future. Applying the prohibitions of the Act will minimize threats that could cause further declines in the status of the species. Additionally, these provisions are advisable because the species needs active conservation to improve the quality of its habitat. By exempting some of the prohibitions, these provisions can encourage cooperation by landowners and other affected parties in implementing conservation measures. This will allow for use of the

land while at the same time ensuring the preservation of suitable habitat and minimizing impact on the species.

When practicable and to the extent possible, the Service encourages managers to conduct such activities in a manner to maintain suitable Louisiana pinesnake habitat in large tracts; minimize ground and subsurface disturbance; and promote a diverse, abundant herbaceous groundcover. Prescribed fire is an important tool to effectively manage open-canopy pine habitats to establish and maintain suitable conditions for the Louisiana pinesnake, and the Service strongly encourages its use over other methods (mechanical or chemical) wherever practicable. The Service also encourages managers, when practicable and to the extent possible, to (1) enroll their lands into third-party forest certification programs such as the Sustainable Forest Initiative, Forest Stewardship Council, and American Tree Farm System; and (2) conduct such activities using best management practices as described and implemented through such programs, or by others such as State forestry agencies, the U.S. Department of Agriculture (the Forest Service's Forest Stewardship Program or the Natural Resources Conservation Service's Conservation Practices Manual), or the U.S. Fish and Wildlife Service's Partners for Fish and Wildlife Program.

As noted above, the management activities discussed above are not subject to the general prohibitions at 50 CFR 17.31 outside of known EOHAs. Within any known EOHAs on lands with suitable or preferable soils that are forested, undeveloped, or non-farmed (i.e., not cultivated on an annual basis) and adjacent to forested lands, the management activities discussed above would also not be subject to the general prohibitions at 50 CFR 17.31, but only provided the following additional conditions are

met:

(a) Those activities do not cause subsurface disturbance including, but not limited to, wind-rowing, stumping, disking (except during firebreak creation or maintenance), root-raking, drum chopping, below-ground shearing, and bedding. In highly degraded areas with no herbaceous vegetation, subsurface disturbance shall be limited to that less than 4 in (10 cm) in depth; and

(b) Those activities do not inhibit the persistence of suitable pocket gopher and Louisiana pinesnake habitat.

These additional conditions on when the prohibitions would not apply within known EOHAs are reasonable because the actual likelihood of encountering individuals of the species is higher within the EOHAs. For the same reason, even if the “necessary and advisable” standard is applied to regulations adopting endangered-species prohibitions for a threatened species, we would find that adopting these more narrow prohibitions is necessary and advisable.

Anyone undertaking activities that are not covered by the provisions, including the additional conditions, and may result in take would need to: (1) ensure, in consultation with the Service are not likely to jeopardize the continued existence of the species (where the entity is a Federal agency or there is a Federal nexus), or (2) obtain a permit before proceeding with the activity (if there is no Federal nexus). A map of the currently known EOHAs is found in the proposed listing rule (81 FR 69461, October 6, 2016). The Service intends to update maps identifying the locations of Louisiana pinesnake EOHAs and make them available to the public in the docket on www.regulations.gov as new information becomes available. Alternatively, you may

contact the Louisiana Ecological Services Field Office (see **ADDRESSES**).

Based on the explanations above, the prohibitions under section 9(a)(1) would apply to the Louisiana pinesnake, with specific exemptions tailored to the conservation of the species. Nothing in this proposed 4(d) rule would change in any way the recovery planning provisions of section 4(f) and consultation requirements under section 7 of the Act or the ability of the Service to enter into partnerships for the management and protection of the Louisiana pinesnake.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition of a species through listing it results in public awareness, and leads Federal, State, Tribal, and local agencies, private organizations, and individuals to undertake conservation. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. Information about the protection required by Federal agencies, and the prohibitions against certain activities, and recovery planning and implementation and interagency consultation, are discussed in the proposed and final listing rules.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to threatened wildlife. The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.31, make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot,

wound, kill, trap, capture, or collect; or to attempt any of these) threatened wildlife within the United States or on the high seas. In addition, it is unlawful to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally.

As described in the final listing rule, it is our policy to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing. Since the Louisiana pinesnake is a threatened species subject to the protections outlined in both section 9(a)(1) of the Act and this proposed rule, we are identifying those activities that would or would not constitute a violation of either section 9(a)(1) or this proposed rule. Based on the best available information, the following activities may potentially result in a violation of section 9 of the Act or this proposed rule; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the Louisiana pinesnake, including interstate transportation across State lines and import or export across international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act.

(2) Introduction of nonnative animal species that compete with or prey upon the Louisiana pinesnake.

(3) Introduction of invasive plant species that contribute to the degradation of the natural habitat of the Louisiana pinesnake.

(4) Unauthorized destruction or modification of suitable occupied Louisiana pinesnake habitat that results in damage to or alteration of desirable herbaceous (non-woody) vegetation or the destruction of Baird's pocket gopher burrow systems used as refugia by the Louisiana pinesnake, or that impairs in other ways the species' essential behaviors such as breeding, feeding, or sheltering.

(5) Unauthorized use of insecticides and rodenticides that could impact small mammal prey populations, through either unintended or direct impacts within habitat occupied by Louisiana pinesnakes.

(6) Unauthorized actions that would result in the destruction of eggs or cause mortality or injury to hatchling, juvenile, or adult Louisiana pinesnakes.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Louisiana Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Under regulations codified at 50 CFR 17.32, we may issue permits to carry out otherwise prohibited activities involving threatened wildlife under certain circumstances, including the following: scientific purposes, to enhance the propagation or survival of the species, economic hardship, zoological exhibition, and incidental take in connection with otherwise lawful activities. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

Information Requested

We intend that any final action resulting from this proposal will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning the proposed section 4(d) rule. We will consider all comments and information received during our preparation of a final 4(d) rule. Accordingly, our final decision may differ from this proposal based on specific public comments or any other new information that may become available.

We particularly seek comments concerning:

(1) Information concerning the appropriateness and scope of a 4(d) rule for the Louisiana pinesnake. We are particularly interested in input from forestry experts regarding forest management, restoration practices, or related activities, along with the value of certified forestry practices and best management practices, that would be appropriately addressed through a 4(d) rule.

(2) Additional provisions the Service may wish to consider for a 4(d) rule in order to manage and conserve the Louisiana pinesnake.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that

determinations as to whether any species is an endangered or threatened species must be made “solely on the basis of the best scientific and commercial data available.”

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Louisiana Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;

- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We intend to undertake an environmental assessment of this action under the authority of the National Environmental Policy Act of 1969. We will notify the public of the availability of the draft environmental assessment for this proposal when it is finished.

References Cited

A list of the references cited in this proposed rule may be found in the docket in *www.regulations.gov*.

Authors

The primary authors of this proposed rule are the staff members of the Louisiana Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, for the reasons just described, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

2. Amend § 17.42 by adding paragraph (i) to read as follows:

§ 17.42 Special rules—reptiles.

* * * * *

(i) Louisiana pinesnake (*Pituophis ruthveni*)--(1) *Definitions*. The following definitions apply only to terms used in this paragraph (i) for activities affecting the Louisiana pinesnake.

(i) *Estimated occupied habitat area (EOHA)*. Areas of land where occurrences of Louisiana pinesnakes have been recorded and that are considered by the Service to be occupied by the species. For current information regarding the EOHAs, contact your local Service ecological services field office. Field office contact information may be obtained from the Service regional offices, the addresses of which are listed in 50 CFR 2.2.

(ii) *Suitable or preferable soils.* Those soils in Louisiana and Texas that generally have high sand content and a low water table and that have been shown to be selected by Louisiana pinesnakes (Natural Resources Conservation Service soil survey hydrologic group, Categories A and B).

(2) *Prohibitions.* Except as noted in paragraph (i)(3) of this section, all prohibitions and provisions of §§ 17.31 and 17.32 apply to the Louisiana pinesnake.

(3) *Exceptions from prohibitions.* Incidental take of the Louisiana pinesnake will not be considered a violation of section 9 of the Act if the take results from any of the following activities:

(i) Outside any known EOHAs:

(A) Forestry activities, including tree thinning, harvest (including clearcutting), planting and replanting pines, as well as other silviculture practices, that maintain lands in forest land use and that result in the establishment and maintenance of open canopy conditions through time across the landscape.

(B) Prescribed burning, including all firebreak establishment and maintenance actions, as well as actions taken to control wildfires.

(C) Herbicide application that is generally targeted for invasive plant species control and midstory and understory woody vegetation control, but also for site preparation when applied in a manner that minimizes long-term impact to noninvasive herbaceous vegetation. All exempted herbicide applications must be conducted in a manner consistent with Federal and applicable State laws, including Environmental Protection Agency label restrictions and herbicide application guidelines as prescribed by herbicide manufacturers.

(ii) Within any known EOHAs on lands with suitable or preferable soils that are forested, undeveloped, or non-farmed (i.e., not cultivated on an annual basis) and adjacent to forested lands, activities described in paragraphs (i)(3)(i)(A) through (C) of this section provided that:

(A) Activities do not cause subsurface disturbance, including, but not limited to, wind-rowing, stumping, disking (except during firebreak creation or maintenance), root-raking, drum chopping, below-ground shearing, and bedding. In highly degraded areas with no herbaceous vegetation, subsurface disturbance will be limited to that less than 4 inches in depth.

(B) Activities do not inhibit the persistence of suitable Louisiana pinesnake and Baird's pocket gopher habitat.

Dated: March 12, 2018.

James W. Kurth,
Deputy Director,
U.S. Fish and Wildlife Service,
exercising the authority of the Director
U.S. Fish and Wildlife Service.

Billing Code 4333-15

